

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:08-CV-460-FL

DUKE ENERGY PROGRESS, INC.,)
)
Plaintiff,)
)
v.)
)
ALCAN ALUMINUM CORPORATION, et al.,)
)
Defendants.)
)

ORDER

No. 5:08-CV-463-FL

CONSOLIDATION COAL COMPANY,)
)
Plaintiff,)
)
v.)
)
ALCAN ALUMINUM CORPORATION, et al.,)
)
Defendants.)
)

This matter comes before the court upon motions and notices of certain third-party defendants seeking now to engage in settlement conferences with third-party plaintiff PCS Phosphate Company, Inc. ("PCS Phosphate").¹ PCS Phosphate protests in its response any insistence by this court that it engage in formalized settlement activities at this time, for the reasons noted. Settlement

¹ Third-party defendants at issue include: Fabri-Kal Corporation and City of Winston-Salem (460 DE 1252; 463 DE 1248); Villanova University (460 DE 1254; 463 DE 1250); Parker-Hannifin Corporation (460 DE 1258; 463 DE 1254); Mass. Electric Construction Co.(460 DE 1267; 463 DE 1263); Henkels & McCoy (460 DE 1270; 463 DE 1266); Riley Power Inc. (460 DE 1271; 463 DE 1267); Bay Mechanical & Electrical Corporation, E. Luke Greene Company, Inc., Georgia-Pacific, LLC, Tallahassee Memorial Healthcare, Inc., and The North Carolina Granite Corporation (460 DE 1274; 463 DE 1270); Trinity Industries, Inc. (460 DE 1275; 463 DE 1272); Barnes & Powell Electrical Company, Inc. (460 DE 1276; 463 DE 1271); CEMEX Construction Materials FL, LLC, DACCO Incorporated, J. C. Blair Memorial Hospital, National Railroad Passenger Corporation, Woodstream Corporation (460 DE 1277; 463 DE 1273); and Saint Augustine's College (460 DE 1281; 463 DE 1277).

activities will be required; however, the court declines in its discretion to mandate them immediately following the conference August 15, 2013. Defendants' motion seeking court ordered mediation is denied. At said conference, among other things, the court will engage the parties attending about settlement timing and techniques which may be considered in aid to settlement efforts, including utility of a special master.

This matter also comes before the court on certain defendants' motion to compel attendance of the United States Environmental Protection Agency ("EPA") at the pending conference.² The court directed the EPA to respond, which response informs it will consider participating in court-sponsored mediation but that it cannot be compelled so to do. It argues against any mandatory duty to offer *de minimis* settlements at the Ward site unless "practicable and in the public interest." CERCLA Section 122(g)(1). The EPA also discloses settlement methodology, concluding that:

While the United States cannot be compelled to appear at the August 15, 2013 Status Conference nor be made to explain in court its decision regarding *de minimis* settlements, should the Court decide to sponsor settlement discussions in the future, EPA will consider attending those discussions voluntarily as it continues to seek a resolution of its claims, including obtaining a commitment of parties to perform the ongoing and future work at the Site.

EPA's Resp. 4.

Defendants' motion seeking court ordered attendance by the EPA is denied. However, the

² This motion was filed on behalf of Atlantic City Electric Company, Bay Mechanical & Electrical Corporation, Blue Ridge Electric Cooperative, Inc., Broad River Electric Cooperative, Inc., Cargill, Incorporated, Consumers Energy Company, Danny Corporation, Delmarva Power & Light Company, Dixon Lumber Company, Inc., Electric Control Equipment Co., Florida Power & Light Company, GKN Driveline North American, Inc., Georgia-Pacific, LLC, Gladioux Trading & Marketing Co., LP, and/or Limited Corporation, Glenwood Resolution Authority, Inc., LWB Refractories Company, Occidental Chemical Corporation, Parker-Hannifin Corporation, Pharmacia Corporation, Potomac Electric Power Company, Sonoco Products Company, Southland Electrical Supply, Inc., St. Joseph Medical Center, Inc., Tallahassee Memorial Healthcare, Inc., Tri-State Armature & Electrical Works, Inc., Unimin Corporation, United Technologies Corporation, Washington Suburban Sanitary Commission (460 DE 1264; 463 DE 1260).

court having noticed that it will be sponsoring some form of a required technique in aid to settlement efforts at a later date, which reasonably will be a topic of discussion at the pending conference, does encourage the EPA to send its representative, to inform as to its position concerning how those efforts may be made effective.

SO ORDERED, this the 12th day of August, 2013.



LOUISE W. FLANAGAN
United States District Judge